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21839	7590	06/25/2004	EXAMINER	
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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/686,621

Applicant(s)

MANNERSTRALE, JACOB

Examiner

Derrick W. Ferris

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 October 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. **Claims 1-31** as filed are still in consideration for this application.
2. Examiner thanks applicant for submitting the foreign priority document.
3. Examiner **withdraws** the objection(s) to the specification for Office action filed **01/26/04**. In particular, examiner thanks applicant for changing the title of invention.
4. Examiner does **not withdraw** the anticipated rejection to *Gilbert* and *Seo* for Office action filed **01/26/04**. In addressing applicant's arguments in the response filed **05/26/04**, applicant argues the reasonable but broad interpretation taken by the examiner. In particular, a reasonable but broad interpretation of "(direct effect on the) comfort of a user" and "number of slots". Examiner notes the term "comfort of user" may be relative. As such the examiner maintains the rejection. Furthermore, the examiner notes that features that the applicant relies on to further define the "comfort of user" are not recited in the claim. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "contacted by the user" and "heat that can be felt by the user") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Examiner will agree that the applied reference may not clearly teach applicant's features above that are not recited in the claims. In fact, the examiner is willing to withdraw the rejection should applicant amend the claims to further clarify these features. However, the examiner would like to further point out that a stronger reference will soon be published, i.e., U.S. Patent Application 09/196,127 formally WO

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00/31990 cited by applicant, which clearly teaches these features in the context that applicant is arguing. Thus if applicant further amended the claims then the examiner would use this reference, once it publishes as a U.S. Patent, in making a new rejection for the claims as necessitated by amendment. In fact, 09/196,127 further clarifies other items brought up by the applicant in applicant's arguments such as time slots and controlling a number of time slots for receiving transmissions (see e.g., page 9 lines 26-27 of WO 00/31990). Furthermore, reallocating of resources such as packets/time slots and spreading codes is based on the measured temperature which is taught by WO 00/31990. However, examiner would like to point out to applicant that the claims recite controlling slots and not necessarily time slots, see e.g., claim 1 line 7. Examiner recommends applicant also further amends the claims to clarify that slots are time slots. Otherwise a slot could be considered a "slot index cycle". Examiner also notes that *Gilbert* teaches monitoring the temperature of other modules and not just the power amplifier, see e.g., column 4, line 13 of *Gilbert*. *Gilbert* also teaches segmenting the packets into smaller packets either based to reduce periods of continuous transmissions or delaying the transmission of messages or portions thereof, see e.g., column 4, lines 40-49. Examiner notes that reducing the periods on continuous transmissions varies the number of slots since the TDM channel protocol is used to allocate a plurality of slots, see e.g., column 3, lines 34-35. Thus manipulation of protocol parameters allows flexibility in transmission rates where the rates vary based on the number of slots for TDM. Examiner would like to point out that 09/196,127 would also clean up the claim interpretations with respect to the *Gilbert* reference as well.

5. Examiner does **not withdraw** the obviousness rejection to *Gilbert* in view of *Koenck*, *Gilbert* in view of *Davis*, *Gilbert* in view of *Shigemor*, *Gilbert* in view of *Flynn*, *Seo* in view of

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Burke, Seo in view of *Ohno*, *Seo* in view of *Burke* in further view of *Ohno*, *Gilbert* in view of *Biedermann*, and *Seo* in view of *Biedermann* for Office action filed **01/26/04**. In addressing applicant's arguments in the response filed **05/26/04**, see arguments presented previously for anticipated rejection above.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. **Claims 1, 2, 7-10, 13-14 and 25-26** are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,519,886 A to *Gilbert et al.* ("*Gilbert*").

As to **claim 1**, *Gilbert* teaches a method and apparatus for controlling device temperature during transmissions. In particular, with respect to a radio transceiver, *Gilbert* teaches the following steps: for monitoring a temperature which has a direct effect on the comfort of a user of the transceiver see e.g., column 2, lines 10-30 and for controlling a number of slots allocated for transmission from said transceiver in response to the monitored temperature see e.g., column 3, lines 17-53. Examiner notes a broad but reasonable interpretation of "comfort for the user". Examiner also notes a broad but reasonable interpretation of "number of slots".

As to **claim 2**, see similar rejection for claim 1.

As to **claims 7-10**, see similar rejection for claims 1 and 2 respectively.

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As to **claims 13-14**, see similar rejection for claims 1 and 2 respectively.

As to **claims 25-26**, see similar rejection for claims 1 and 2 respectively.

Examiner notes a reasonable but broad interpretation of “mode of operation”.

8. **Claims 15-17, 23, 24 and 25-26** are rejected under 35 U.S.C. 102(a) as being anticipated by GB 2 328 588 A to *Seo*.

As to **claim 15**, *Seo* discloses adjusting activity intervals according to the remaining battery capacity in a mobile communication terminal. In particular, *Seo* teaches adjusting the slot cycle, which reads on “controlling a number of slots allocated for transmission from said transceiver in response to the monitored batter capacity” (i.e., applicant does not further recite in the claims controlling consecutive time-slots in a frame).

As to **claim 16**, see similar reasoning for rejecting claim 15.

As to **claims 17**, see e.g., figure 2.

As to **claim 23**, see similar reasoning for rejecting claim 15.

As to **claim 24**, see similar reasoning for rejecting claim 16.

As to **claims 25-26**, see similar rejection for claims 1 and 2 respectively.

Examiner notes a reasonable but broad interpretation of “mode of operation”.

9. **Claims 25-31** are rejected under 35 U.S.C. 102(a) as being anticipated by GB 2 328 588 A to *Seo*.

As to **claims 25-26**, see e.g., column 4, lines 15-29.

As to **claim 27**, see e.g., column 5, lines 10-20.

As to **claim 28**, see e.g., column 1, lines 15-35.

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As to **claims 29-30**, see e.g., column 4, lines 40-55 and column 5, lines 10-20.

As to **claim 31**, see e.g., 5, lines 4-14.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. **Claims 3 and 5** are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S.

Patent No. 5,519,886 A to *Gilbert et al.* (“*Gilbert*”) in view of U.S. Patent No. 5,883,493 A to *Koenck*.

As to **claims 3 and 5**, *Gilbert* discloses the general concept of monitoring external devices, e.g., see column 4, lines 7-20 (i.e., “other temperature sensitive modules”).

Gilbert is silent or deficient to the further limitation of monitoring specific modules such as the temperature of a casing, the display, or the battery of the device.

Koenck teaches the further recited limitation for monitoring the temperature of a battery case and a battery at column 3, line 62 – column 4, lines 5.

Examiner notes that it would have been obvious to one skilled in the art prior to applicant’s invention to include monitoring the temperature of other modules such as the temperature of a casing, the display, or the battery of the device. In particular, one skilled in the art would be motivated to performing monitoring the temperature of various other modules that improve the “user experience”. The suggestion or motivation for doing so would have been to improve battery reliability or to increase performance of the

LCD. In particular, *Koenck* cures the above-cited deficiency by providing a motivation found at column 3, line 62 – column 4, lines 5.

12. **Claims 4 and 12** are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,519,886 A to *Gilbert et al.* (“*Gilbert*”) in view of U.S. Patent No. 5,475,741 A to *Davis et al.* (“*Davis*”).

As to **claim 4**, *Gilbert* discloses the general concept of monitoring external devices, e.g., see column 4, lines 7-20 (i.e., “other temperature sensitive modules”).

Gilbert is silent or deficient to the further limitation of monitoring specific modules such as the temperature of a casing, the display, or the battery of the device.

Davis teaches the further recited limitation for monitoring the temperature of a display at column 6, lines 29-44.

Examiner notes that it would have been obvious to one skilled in the art prior to applicant’s invention to include monitoring the temperature of other modules such as the temperature of a casing, the display, or the battery of the device. In particular, one skilled in the art would be motivated to performing monitoring the temperature of various other modules that improve the “user experience”. The suggestion or motivation for doing so would have been to improve battery reliability or to increase performance of the LCD. In particular, *Davis* cures the above-cited deficiency by providing a motivation found at column 4, lines 65-68.

As to **claim 12**, see similar rejection for claim 4.

13. **Claim 11** is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,519,886 A to *Gilbert et al.* (“*Gilbert*”) in view of U.S. Patent No. RE 36,973 to *Shigemori*

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As to **claim 11**, see similar reasoning for the rejection of claims 3-5 where *Gilbert* is silent or deficient to specifically monitoring the temperature of a crystal oscillator within a device. *Shigemori* cures the above-cited deficiency and provides a motivation in the Background, e.g., see column 3, lines 35-65. Thus it would have been obvious using the same reasoning as mentioned above.

14. **Claim 6** is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,519,886 A to *Gilbert et al.* ("*Gilbert*") in view of U.S. Patent No. 5,870,685 A to *Flynn*.

As to **claim 6**, *Gilbert* is silent or deficient to the further limitation of wherein the number of allocated slots is controlled by sending a message to the radio communication system.

Flynn teaches the further recited limitation e.g., at column 6, lines 13-41 (e.g., a channel assignment message).

Examiner notes that it would have been obvious to one skilled in the art prior to applicant's invention to include the further limitation of wherein the number of allocated slots is controlled by sending a message to the radio communication system. In particular, one skilled in the art would be motivated to use a message to let the receiving end know how many time slots are in use. The suggestion or motivation for doing so would have been to use more than one time slot. In particular, *Flynn* cures the above-cited deficiency by providing a motivation found at e.g., column 6, lines 13-41.

15. **Claims 18, 19, 21, and 22** are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2 328 588 A to *Seo* in view of U.S. Patent No. 5,248,929 A to *Burke*.

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As to **claims 18, 19, 21, and 22**, *Seo* is silent or deficient to the further limitations of wherein the battery capacity is estimated indirectly and as a measure of past use (e.g., the number of time slots in which the transceiver has transmitted data or the past current consumption of at least a part of the transceiver).

Examiner notes that it would have been obvious to one skilled in the art prior to applicant's invention to include the further limitations of wherein the battery capacity is estimated indirectly and as a measure of past use (e.g., the number of time slots in which the transceiver has transmitted data or the past current consumption of at least a part of the transceiver). In particular, *Burke* cures the above-cited deficiencies at page 3, lines 5-41. One would be motivated to modify *Seo* to include the teachings of *Burke* to improve the battery capacity of a cellular telephone.

16. **Claim 20** is rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2 328 588 A to *Seo* in view of U.S. Patent No. 5,248,929 A to *Burke* in further view of U.S. Patent No. 5,774,784 to *Ohno*.

As to **claim 20**, *Seo* is silent or deficient to the further limitation of wherein the battery capacity is estimated on the basis of a temperature thereof.

Examiner notes that it would have been obvious to one skilled in the art prior to applicant's invention to include the further limitation of wherein the battery capacity is estimated on the basis of a temperature thereof. In particular, *Ohno* cures the above-cited deficiencies in the abstract by providing a relationship between power and temperature as a motivation.

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17. **Claim 28** is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,519,886 A to *Gilbert et al.* (“*Gilbert*”) in view of U.S. Patent No. 6,490,447 B2 to *Biedermann et al.* (“*Biedermann*”).

As to **claim 28**, *Gilbert* is silent or deficient to the further limitation of when the transceiver is operating in a radio frequency simplex system.

Examiner notes that it would have been obvious to one skilled in the art prior to applicant’s invention to include the further limitation of when the transceiver is operating in a radio frequency simplex system. In particular, *Biedermann* cures the above-cited deficiencies in the Background by teaching that simplex systems for TDMA are well known in the art were TDMA is a motivation e.g., see column 1, lines 15-33.

18. **Claim 28** is rejected under 35 U.S.C. 102(b) as being anticipated by GB 2 328 588 A to *Seo* in view of U.S. Patent No. 6,490,447 B2 to *Biedermann et al.* (“*Biedermann*”).

As to **claim 28**, *Seo* is silent or deficient to the further limitation of when the transceiver is operating in a radio frequency simplex system.

Examiner notes that it would have been obvious to one skilled in the art prior to applicant’s invention to include the further limitation of when the transceiver is operating in a radio frequency simplex system. In particular, *Biedermann* cures the above-cited deficiencies in the Background by teaching that simplex systems for TDMA are well known in the art were TDMA is a motivation e.g., see column 1, lines 15-33.

Conclusion

19. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Derrick W. Ferris whose telephone number is (703) 305-4225. The examiner can normally be reached on M-F 9 A.M. - 4:30 P.M. E.S.T.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau Nguyen can be reached on (703) 308-5340. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Derrick W. Ferris
Examiner
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